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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/097,383

06/16/1998

KARE CHRISTIANSEN

PM254781

2876

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7590

11/28/2007

PILLSBURY WINTHROP SHAW PITTMAN, LLP
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EXAMINER

SHAY, DAVID M

ART UNIT

PAPER NUMBER

3735

MAIL DATE

DELIVERY MODE

11/28/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/097,383	Applicant(s) CHRISTIANSEN ET AL.	
	Examiner david shay	Art Unit 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,8,10-15,18 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3,8,10-15,18 and 23-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

The Foreign priority document DK PA 1997 00703 submitted August 31, 2000, is not a proper certified copy. All the pages save the front page bear markings indicating that they are copies from a facsimile (i.e. a fax) transmission. Further there is no hole where the official ribbon would have been passed through the document. It is also puzzling that a Danish patent application should have the entirety of the text therein in English. The Foreign priority document from Great Britain is proper.

The drawings are objected to because the graphs in Figure 6a-c contain indicia overlaid over the abscissas thereof; the graph in Figure 7 contains garbled indicia on the abscissa thereof; the graph in Figure 9 is poorly reproduced and has shading such that the lines shown therein are not clear. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “said flow path forms a closed circuit” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

It is noted that the claims contain various functional recitations that are of the form to constitute a means plus function recitation under section 112, sixth paragraph: “means for defining a flow path for said water” and “means is provided for adjusting said time weighted average light power output...” (see MPEP 2181).

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: “said flow path forms a closed circuit”.

Claims 3 and 8 are objected to as being of improper form, these claims include a means plus function recitation, by virtue of dependence on claim 2, but define substantial structures, materials, or acts defining the function, and thus are of improper form for a means plus function recitation (see MPEP 2181).

Claims 1 and 23 are rejected under 3 U.S.C. 103(a) as being unpatentable over Eckhouse in combination with Berry. Eckhouse teaches a device as claimed except for the specific recitation of the use of water in conjunction with the embodiment otherwise reading on the claims. Berry teaches an arc lamp using water to filter infra red and cool the lamp as well as an applicator with a convex tip. It would have been obvious to the artisan of ordinary skill to

Art Unit: 3735

employ the cooling system of Berry in the device of Eckhouse, since Eckhouse teaches that it is important to keep the tissue surface cool, thus producing a device such as claimed.

Claims 1-3 and 8 are rejected under 3 U.S.C. 103(a) as being unpatentable over Eckhouse in combination with Berry as applied to claims 1 and 23 are above, and further in view of Gustafsson. Gustafsson teaches a xenon lamp using circulating water to cool flash tubes and an optical fiber applicator with a convex tip. It would have been obvious to the artisan of ordinary skill to employ the lamp and cooling system; of Gustafsson in the device of Eckhouse as modified by Berry, since the cooling system of Gustafsson makes the lamp much more effective (see column 2, line 62 to column 3, line 6), thus producing a device such as claimed.

Claims 10-15, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckhouse in combination with Berry and Gustafsson as applied to claims 1-3 and 8 above, and further in view of Anderson et al and Optoelectronics. Optoelectronics teaches the use of power supplies that use simmers circuits and apply square pulse to the flask tube. Anderson et al teach the use of square wave pulses and a convex applicator tip. It would have been obvious to the artisan of ordinary skill to employ an applicator tip as taught by Anderson et al since this allows treatment of a larger area, as taught by Anderson et al; to employ the square wave light pulses therein, since this allows a more uniform optical field; to apply a simmer circuit and a power supply to produce square pulses, since these will aid in the production of flat topped optical pulses, which is desirable as taught by Anderson et al; and to provide a concave or parallelepiped shape at the light guide distal end, since these are equivalent to the convex tip and provide no unexpected result, thus producing a device such as claimed.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eckhouse in combination with Berry and Gustafsson as applied to claims 1-3 and 8 are above, and further in view of Vassiliadis et al. Vassiliadis et al teach the desirability of employing an interlock on a filter. It would have been obvious to the artisan of ordinary skill to employ an interlock on the filter in the device of Eckhouse or Gustafsson since this would provide a safer device, thus producing a device such as claimed.

Applicant's arguments with respect to claims 1-3, 8, 10-15, 18, and 23-25 have been considered but are moot in view of the new ground(s) of rejection.

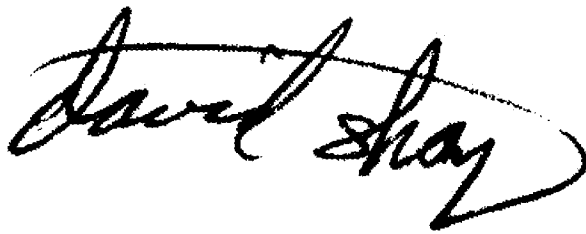
Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Thursday from 6:30 a.m. to 5:00 p.m.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II, can be reached on Monday, Tuesday, Wednesday, Thursday, and Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3735

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "David M. Shay". The signature is fluid and cursive, with a large loop at the end.

**DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330**